

**ORIGINAL**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA <i>ex rel.</i>	)	
WILLIAM SULLIVAN,	)	
	)	
Plaintiff,	)	Civil Action No. 15-0716 (JDB)
	)	
v.	)	<u>FILED UNDER SEAL</u>
	)	
INFORMATICA CORPORATION,	)	
	)	
Defendant.	)	
	)	

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**STIPULATION OF DISMISSAL AND REQUEST TO UNSEAL**

By and through their undersigned counsel and pursuant to Federal Rule of Civil Procedure 41(a), the United States of America (“United States”) and Relator William Sullivan (“Relator”) hereby stipulate to dismiss this action under the terms of the Settlement Agreement entered into between the parties to this action and effective March 29, 2019, which is enclosed herewith as Exhibit 1. Specifically, the United States and Relator stipulate to dismiss (i) all claims pending in this action against Defendant Informatica Corporation (“Informatica”) arising from the Covered Conduct (as defined in the Settlement Agreement) with prejudice as to the United States and Relator; and (ii) all other claims pending in this action with prejudice to Relator and without prejudice to the United States.

In light of the parties’ settlement, the United States further respectfully requests that the seal over this action be lifted going forward. Also, the United States requests that the following items on the current docket be similarly unsealed: (i) Relator’s initial complaint filed on or about May 11, 2015; (ii) the Protective Order entered by the Court on July 28, 2015; (iii) the Order entered on August 28, 2018, which partially lifted the seal over this matter; (iv) this Stipulation and the enclosed Settlement Agreement and Proposed Order; and (v) the Court’s Order with

respect to this filing. The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers were provided by law to the Court for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended. A proposed order is enclosed herewith.

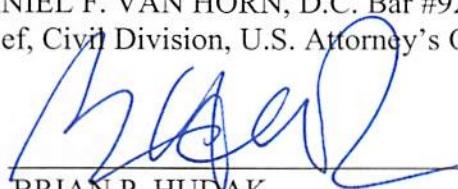
Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JESSIE K. LIU, D.C. Bar #472845  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092  
Chief, Civil Division, U.S. Attorney's Office

By:



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*Attorneys for the United States of America*

Dated: April 26, 2019

LONDON & MEAD

By: /s/  
MARK LONDON, D.C. Bar #293548  
CHRISTOPHER B. MEAD, D.C. Bar #411598  
LANCE ROBINSON, D.C. Bar #991118  
1225 19th Street, NW, Suite 320  
Washington, DC 20036  
(202) 331-3334

*Attorneys for Relator William Sullivan*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of April 2019, I caused a true and correct copy of the foregoing to be served on counsel for Relator and Defendant by electronic mail.



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BRIAN P. HUDAK  
Assistant United States Attorney  
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||  
||

# Exhibit

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EXECUTION VERSION

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into among (i) the United States of America, acting through the United States Department of Justice (“DOJ”) and on behalf of the General Services Administration (“GSA”); (ii) Informatica LLC f/k/a Informatica Corporation (“Informatica”); and (iii) Relator William Sullivan (“Relator”) (the United States, Informatica, and Relator each a “Party” and collectively the “Parties”), through their authorized representatives.

**RECITALS**

A. Informatica is a software development company founded in 1993 and headquartered in Redwood City, California. Among other channels, Informatica has sold its products to certain resellers, including DLT Solutions, LLC (“DLT”), IPI Grammtech, Ltd. (“IPI”), and immixGroup, Inc. (“Immix”) (collectively, the “Resellers”), who in turn have sold Informatica products to government purchasers through GSA Multiple Award Schedule (“MAS”) contracts the Resellers have held.

B. On May 11, 2015, Relator filed a *qui tam* action in the United States District Court for the District of Columbia captioned *United States ex rel. Sullivan v. Informatica Corp.*, Civ. A. No. 15-0716 (JDB) (D.D.C.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that it has certain civil and administrative claims against Informatica arising from the following alleged conduct. The actions, transactions, occurrences, and alleged wrongdoing set forth in this Paragraph C are herein collectively referred to as the “Covered Conduct.”

i. From January 1, 2008, to March 31, 2017 (the “Relevant Time Period”), Informatica provided disclosures of its written discounting policies or commercial sales practices (“CSPs”) that were materially false or incomplete;

[REDACTED]

ii. During the Relevant Time Period, the Resellers used the false or incomplete CSPs provided by Informatica to negotiate and perform their GSA MAS contracts, including but not limited to, using the CSPs to negotiate prices of Informatica products listed under the Resellers' GSA MAS contracts;

iii. During the Relevant Time Period, the Resellers sold products to government purchasers and submitted corresponding claims under the Resellers' GSA MAS contracts—including via delivery orders, task orders, purchase orders, blanket purchase agreements, and other GSA MAS contract vehicles, or provisions of any such orders, agreements, or contract vehicles—at prices in excess of those that GSA would have otherwise negotiated had Informatica provided fully current, accurate, and complete CSPs; and

iv. During the Relevant Time Period, Informatica caused the Resellers to offer Informatica products on their GSA MAS contracts—including via delivery orders, task orders, purchase orders, blanket purchase agreements, and other GSA MAS contract vehicles, or provisions of any such orders, agreements, or contract vehicles—that originated in countries other than the United States or a designated country as provided for by the Trade Agreements Act of 1979, as amended (“TAA”).

D. This Agreement is made in compromise of disputed claims. This Agreement is not an admission of facts or liability by Informatica, nor a concession by the United States or Relator that their claims are not well founded. Informatica expressly denies the allegations of the United States and Relator set forth herein and in the Civil Action and denies that it engaged in any wrongful conduct in connection with the Covered Conduct.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows.

#### **TERMS AND CONDITIONS**

1. Informatica shall pay to the United States a total of \$21,570,000 (twenty-one million, five hundred and seventy thousand dollars) (the "Settlement Amount"), of which \$10,785,000 (ten million, seven hundred and eighty-five thousand dollars) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the District of Columbia or the Civil Division of the Department of Justice no later than 14 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from Informatica and as soon as feasible after receipt, the United States shall pay \$4,314,000 (four million, three hundred and fourteen thousand dollars) to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

3. Subject to the exceptions in Paragraph 5 below (concerning excluded claims), and conditioned upon Informatica's full payment of the Settlement Amount, the United States releases Informatica, together with its parent corporations and other corporate entities with ownership interests in Informatica (including but not limited to limited partnerships), and the predecessors, successors, or assigns of any of them, from any civil or administrative monetary claim the United States has arising out of the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; common law theories of breach of contract, payment by mistake, unjust enrichment, negligent misrepresentation, or fraud; or any statutory provision which the Civil

Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 CFR Part 0, Subpart I, 0.45(d).

4. Subject to the exceptions in Paragraph 5 below (concerning excluded claims), and conditioned upon Informatica's full payment of the Settlement Amount and the attorneys' fees ("Attorney Fee Payment") called for by a separate agreement entered into this same date between Relator and Informatica (the "Attorney Fee Agreement"), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Informatica, together with its affiliated entities, its divisions, its investors and parents, its officers, agents and employees, and the predecessors, successors, or assigns of any of them, from any and all civil claims (including attorney's fees, costs, and expenses of every kind and however denominated) known or unknown arising out of the Covered Conduct or related to Relator's employment by Informatica, including claims under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability (except administrative monetary claims noted in Paragraph 3), including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;

- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages; or,
- i. Any liability of individuals.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payments described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement, the Covered Conduct, and/or the Civil Action.

7. Informatica waives and shall not assert any defenses Informatica may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution, or administrative action.

8. Informatica fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Informatica has asserted, could have asserted, or

may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. Informatica fully and finally releases Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Informatica has asserted, could have asserted, or may assert in the future against Relator, related to the Covered Conduct or to his employment by Informatica, the Civil Action, and the Relator's investigation and prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Informatica, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Informatica's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and/or
- (5) the payment Informatica makes to the United States pursuant to this Agreement and any payments that Informatica may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Informatica, and Informatica shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Informatica shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Informatica or any of its subsidiaries or affiliates from the United States. Informatica agrees that the United States, at a minimum, shall be entitled to recoup from Informatica any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Informatica's books and records and to disagree with any calculations submitted by Informatica or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Informatica, or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only, except as otherwise provided specifically herein.

12. Upon the United States' receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) dismissing all claims in the Civil Action against Informatica arising from the Covered Conduct with prejudice as to the United States and Relator and any and

all remaining claims in the Civil Action without prejudice as to the United States and with prejudice as to Relator.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as otherwise expressly provided herein.

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States.

16. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia unless that Court determines that venue or jurisdiction is lacking over any such dispute.

17. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement and the Attorney Fee Agreement constitute the complete agreement between the Parties.

19. This Agreement may not be amended except by written consent of the Parties.

20. The undersigned signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement is binding on Informatica's successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's respective successors, transferees, heirs, and assigns.

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23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement).

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

26. Facsimiles of signatures and electronic signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

<REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGES TO FOLLOW>

FOR THE UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF JUSTICE AND ON BEHALF OF THE GENERAL SERVICES ADMINISTRATION:

DATED: 3/29/2019

BY: D. Barnes

DENISE M. BARNES

Trial Attorney, Commercial Litigation Branch  
Department of Justice

DATED: 3/29/19

BY: Brian Paul Hudak

BRIAN PAUL HUDAK

Assistant United States Attorney  
U.S. Attorney's Office for the District of Columbia

[ ]

**FOR INFORMATICA LLC:**

DATED: 3/26/2019 BY: Bradford C. Lewis  
BRADFORD C. LEWIS  
Senior Vice President and Chief Legal Officer  
Informatica LLC

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ROBERT J. CONLAN  
Sidley Austin LLP  
Attorneys for Informatica LLC

**FOR INFORMATICA LLC:**

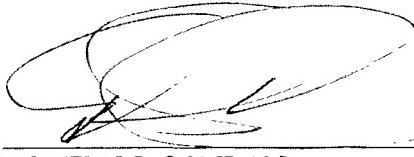
DATED: \_\_\_\_\_

BY: \_\_\_\_\_

BRADFORD C. LEWIS  
Senior Vice President and Chief Legal Officer  
Informatica LLC

DATED: 3-29-19

BY: \_\_\_\_\_

  
ROBERT J. CONLAN  
Sidley Austin LLP  
Attorneys for Informatica LLC

**FOR RELATOR WILLIAM SULLIVAN:**

DATED: 3/29/19

BY:   
WILLIAM SULLIVAN

Relator

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

CHRISTOPHER B. MEAD  
MARK LONDON  
LANCE ROBINSON  
London & Mead  
Attorneys for Relator William Sullivan

11

**FOR RELATOR WILLIAM SULLIVAN:**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
WILLIAM SULLIVAN  
Relator

DATED: 3/29/19

BY: Lance Robinson  
CHRISTOPHER B. MEAD  
MARK LONDON  
LANCE ROBINSON  
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Attorneys for Relator William Sullivan